

EXHIBIT C

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6

7 **ATTORNEYS FOR DEFENDANT ETS SERVICES, LLC**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 FRANCISKA SUSILO,

11 Plaintiff,

12 vs.

13 WELLS FARGO BANK, N.A., form
unknown; WACHOVIA MORTGAGE
14 FSB, f.k.a. World Savings Bank FSB,
form unknown ETS SERVICES, LLC,
15 form unknown; CARLOS GONZALEZ,
an individual; CHRISTOPHER LEE
16 ROBERTSON, an individual doing
business as Real Estate Advisors, form
17 unknown; ADVISORS, INC., a California
corporation doing business as Real Estate
18 Advisors; REAL ESTATE ADVISORS,
form unknown; DOES 1 to 50, Inclusive,

19 Defendants.
20

21 ETS SERVICES, LLC,

22 Cross-Complainant,

23 vs.

24 WACHOVIA MORTGAGE, A
DIVISION OF WELLS FARGO BANK,
25 N.A., SUCCESSOR BY MERGER TO
WACHOVIA MORTGAGE, FSB; and
26 ROES 1 through 50, inclusive,

27 Cross-Defendants.
28

Case No: CV11-1814-CAS-PJWx

**CROSS-COMPLAINT OF ETS
SERVICES, LLC (RE: PLAINTIFF'S
SECOND AMENDED COMPLAINT)
FOR:**

1. Equitable Indemnity
2. Comparative Indemnity
3. Comparative Contribution
4. Declaratory Relief

District Judge: Christina A. Snyder

Complaint Filed: 03/02/2011
Trial Date: 10/02/12

1 **COME NOW** Cross-Complainant ETS Services, LLC (hereinafter "Cross-
2 complainant"), and bring this Cross-Complaint (Re: Plaintiff's Second Amended
3 Complaint) against Cross-defendant WACHOVIA MORTGAGE, A DIVISION OF
4 WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WACHOVIA
5 MORTGAGE, FSB, erroneously sued separately in the underlying case as "Wells Fargo
6 Bank, N.A., form unknown; Wachovia Mortgage, FSB, fka World Savings Bank, FSB,
7 form unknown" (hereinafter "Wachovia"), and ROES 1 through 50, inclusive, as follows:

8 **JURISDICTION**

9 1. This court has jurisdiction under 28 U.S.C. §1332(a)(2) because there is
10 diversity of citizenship and an amount in controversy greater than \$75,000. Plaintiff
11 Franciska Susilo ("Plaintiff") is not a United States citizen and currently resides in
12 Singapore, Republic of Singapore. Wachovia is a citizen of South Dakota, and ETS is a
13 citizen of Delaware and Michigan.

14 **VENUE**

15 2. Venue is proper pursuant to 28 U.S.C. §1391 because the property at issue in
16 the underlying complaint is located in this district.

17 **PARTIES**

18 3. Cross-complainant ETS Services, LLC ("Cross-complainant"), is a limited
19 liability company, doing business in Los Angeles County, California. Cross-complainant
20 was the foreclosing Trustee under the subject Note and Deed of Trust in Plaintiff's
21 Second Amended Complaint.

22 4. Cross-complainant is informed and believes, and on that basis alleges, that
23 cross-defendant WACHOVIA MORTGAGE, A DIVISION OF WELLS FARGO
24 BANK, N.A., SUCCESSOR BY MERGER TO WACHOVIA MORTGAGE, FSB,
25 erroneously sued separately in the underlying case as "Wells Fargo Bank, N.A., form
26 unknown; Wachovia Mortgage, FSB, fka World Savings Bank, FSB, form unknown"
27 (hereinafter "Wachovia") is a National Association, doing business in Los Angeles
28 County, California. Wachovia was the foreclosing beneficiary under the subject Note

1 and Deed of Trust in Plaintiff's Second Amended Complaint.

2 **GENERAL ALLEGATIONS**

3 5. On or about November 17, 2011, Plaintiff filed her Second Amended
4 Complaint naming Cross-complainant as defendants. Plaintiff alleges that on or about
5 July 21, 2010 a Notice of Default and Election to Sell under Deed of Trust ("NOD") was
6 recorded in the Los Angeles County Recorder's Office based upon Plaintiff's default on
7 the loan secured by the subject Deed of Trust. Plaintiff further alleges that in or about
8 September 2010, Plaintiff was advised by Cross-complainant that the total amount
9 necessary to cure the default was less than \$46,800 which fund should be delivered to
10 Wachovia. Plaintiff further alleges that she received a letter dated September 28, 2010
11 sent by Shanon De'Arman on behalf of Cross-complainant and Wachovia with the same
12 information. Plaintiff alleges that on or about October 7, 2011, she caused a check issued
13 by Bank of America in the total reinstatement amount to be delivered to Wachovia.
14 Plaintiff alleges that such check was accepted and endorsed for deposit by Wachovia, but
15 that the endorsement was thereafter cancelled and Wachovia continued with the
16 foreclosure proceedings. Plaintiff also alleges that on or about November 10, 2012,
17 Plaintiff delivered to Wachovia proof of a cashier's check in the total reinstatement
18 amount at that time. Plaintiff alleges that despite tendering these checks, the subject loan
19 was not reinstated. Plaintiff further alleges that the foreclosure was improperly conducted
20 in light of Plaintiff's reinstatement of the subject loan. As a result of the alleged wrongful
21 foreclosure, Plaintiff alleges she suffered and continues to suffer injuries as alleged in her
22 Second Amended Complaint.

23 6. Plaintiff alleges that she sustained injuries and damages as a result of Cross-
24 complainant's representations of the reinstatement procedure. For purposes of
25 information only, and without admitting any of the allegation contained therein, cross-
26 complainant incorporates Plaintiff's Second Amended Complaint filed herein by
27 reference as though fully set forth.

28 7. In her Second Amended Complaint, Plaintiff seeks damages, attorney's fees

1 and costs, cancelation of the Trustee's Deed upon Sale, and disgorgement of profits and
2 proceeds.

3 8. Cross-complainant alleges that it is the foreclosing agent on behalf of
4 Wachovia, the beneficiary under the Note and Deed of Trust. Cross-complainant further
5 alleges that it followed Wachovia's instructions in communicating information,
6 including reinstatement information, to Plaintiff. Cross-complainant further alleges that
7 it followed Wachovia's instructions in acting as foreclosing Trustee.

8 9. Cross-complainant is informed and believes that Plaintiff tendered a check
9 in the amount of \$48,000 issued by Bank of America to Wachovia, and that such check
10 was endorsed by Wachovia. Thereafter, upon information and belief, Cross-complainant
11 alleges that Wachovia cancelled the endorsement of the tendered check and the subject
12 loan was not reinstated.

13 10. In accordance with Wachovia's instructions, Cross-complainant conducted
14 the foreclosure sale on November 12, 2010.

15 11. Upon information and belief, Cross-complainant allege that Wachovia and
16 each cross-defendant designated herein as a ROE are negligently, statutorily, vicariously,
17 or otherwise legally responsible in some manner for the events and happenings referred
18 to in the Second Amended Complaint, and are therefore responsible for Plaintiff's
19 damages.

20 12. Cross-complainant is informed and believes, and based thereon alleges, that
21 cross-defendants ROES 1 through 50 are individuals or business entities whose capacities
22 are unknown, but who at all times herein mentioned were doing business in the State of
23 California. The true names and capacities of cross-defendants designated herein as
24 ROES 1 through 50, inclusive, are unknown to Cross-complainant. Cross-complainant
25 therefore sues these cross-defendants by such fictitious names. Cross-complainant will
26 seek leave of court to amend this cross-complaint to insert the true names and capacities
27 of these fictitiously named cross-defendants when the same have been ascertained.

28 13. Cross-complainant is informed and believes, and based thereon alleges, that

1 cross-defendants were the agents and employees of each of the remaining cross-
2 defendants, and each of said cross-defendants were at all times acting within the purpose
3 and scope of said agency and employment.

4 14. Without admitting any of Plaintiff's allegations contained in her Second
5 Amended Complaint, Cross-complainant is informed and believes and based thereon
6 alleges that cross-defendants Wachovia, and ROES 1 through 50, inclusive, negligently
7 and carelessly failed to exercise reasonable care and diligence to avoid loss, minimize,
8 and mitigate damages to Plaintiff, which could have been prevented by reasonable efforts
9 on the part of cross-defendants.

10 15. Cross-complainant is informed and believes, and based thereon alleges, that
11 cross-defendants' negligence and wrongful conduct caused, in whole or in part, the
12 injuries and damages alleged by Plaintiff, if any.

13 16. Cross-complainant is informed and believes, and based thereon alleges, that
14 as a direct, legal, and proximate result of the negligence and wrongful conduct of cross-
15 defendants, and each of them, Cross-complainant has incurred and continue to incur costs
16 and expenses, including, but not limited to, litigation costs and attorneys' fees, to defend
17 Plaintiff's Second Amended Complaint and Wachovia's Cross-Complaint.

18 **FIRST CAUSE OF ACTION**

19 **(Equitable Indemnity - As to All Cross-Defendants)**

20 17. Cross-complainant incorporates by reference each and every allegation
21 contained in paragraphs 1 through 14, above, as though set for in full herein.

22 18. Cross-complainant has answered the Second Amended Complaint, denying
23 the allegations therein and further denying that Plaintiff was damaged in any way. Cross-
24 complainant has also pled various affirmative defenses in their Answer to the Second
25 Amended Complaint. Said Answer is incorporated herein by reference as though fully
26 set forth herein. If it is determined that Plaintiff was in fact injured or suffered damages
27 due to the incidents and products alleged by Plaintiff, such damages were caused in
28 whole or in part by the conduct, acts, omissions, fault and other wrongful conduct,

1 intentional or otherwise, on the part of cross-defendants.

2 19. An actual controversy now exists between Cross-complainant and cross-
3 defendants, and each of them, the nature of which is entitlement to indemnity and
4 contribution. If Plaintiff recovers against Cross-complainant, or any of them, herein, then
5 Cross-complainant asserts it is entitled to equitable indemnity, apportionment of liability,
6 and contribution among and from the cross-defendants, and each of them, according to
7 their respective fault for the injuries and damages allegedly sustained by Plaintiff, if any,
8 made by way of sums paid by settlement, judgment or otherwise against cross-defendants
9 based upon the Second Amended Complaint.

10 20. If it is determined that Cross-complainant is in any manner at fault for the
11 damages alleged by Plaintiff, then any such fault was vicarious, passive and secondary,
12 and the negligence, fault and culpability of cross-defendants in connection with the
13 incidents alleged in the Second Amended Complaint was active, primary and affirmative.

14 21. Accordingly, Cross-complainant is entitled to indemnification by cross-
15 defendants, and each of them, for any and all amounts which Cross-complainant may in
16 good faith be obliged to pay by compromise, settlement or judgment to Plaintiff, and
17 further will be entitled to costs, fees and expenses in connection therewith.

18 22. It has been necessary for Cross-complainant to retain the services of an
19 attorney to defend in this action and to bring these claims. Accordingly, this Cross-
20 Complaint shall serve as notice to cross-defendants of Cross-complainant's demands that
21 such cross-defendants indemnify Cross-complainant for all losses, damages, judgments,
22 fees and costs in connection with the defense of the Second Amended Complaint.

23 **SECOND CAUSE OF ACTION**

24 **(Comparative Indemnity - As to All Cross-Defendants)**

25 23. Cross-complainant repeats, re-alleges, and incorporates herein by reference
26 each and every paragraph of the First Cause of Action of this Cross-Complaint and
27 paragraphs 1 through 20, herein.

28 24. If, upon trial of this matter, judgment is rendered in favor of Plaintiff, Cross-

1 complainant will have been damaged as a proximate result of the wrongful conduct of all
2 cross-defendants as hereinbefore alleged. Based upon the foregoing, Cross-complainant
3 is entitled to indemnification from cross-defendants, and each of them, in an amount
4 equal to that portion of the total amount of the judgment which is attributable to the acts
5 and omissions of cross-defendants, and each of them.

6 **THIRD CAUSE OF ACTION**

7 **(Comparative Contribution - As to All Cross-Defendants)**

8 25. Cross-complainant repeats, re-alleges, and incorporates herein by reference
9 each and every paragraph of the First and Second Causes of Action of this Cross-
10 Complaint and paragraphs 1 through 22, herein.

11 26. Cross-complainant contends that if Plaintiff incurred any loss, damage or
12 detriment as alleged in the Second Amended Complaint, then the same was directly and
13 proximately caused and contributed to by the primary, active, and sole negligent and
14 other wrongful conduct of cross-defendants, and each of them. If Cross-complainant is
15 are held liable to Plaintiff, then Cross-complainant is entitled to contribution on an
16 equitable basis from cross-defendants, and each of them, whose negligence or other
17 wrongful conduct caused or contributed to such loss, damage or detriment.

18 **FOURTH CAUSE OF ACTION**

19 **(Declaratory Relief – Indemnity and Contribution As to All Cross-Defendants)**

20 27. Cross-complainant repeats, re-alleges, and incorporates herein by reference
21 each and every paragraph of the First, Second, and Third Causes of Action of this Cross-
22 Complaint and paragraphs 1 through 24, herein.

23 28. Cross-complainant is informed and believes, and on that basis alleges, that
24 an actual controversy has arisen and now exists with cross-defendants, and each of them,
25 with respect to any ultimate responsibility in the underlying action, and with respect to
26 the rights to receive, or duty to give, indemnification in proportion to their comparative
27 fault, if any, with respect to the injuries and damages claimed by Plaintiff.

28 29. A judicial determination is necessary to resolve the dispute set forth herein

1 as no other adequate remedy at law exists to provide a prompt, speedy and timely
2 resolution thereof. Such a declaration is necessary and appropriate at this time in order
3 that the parties to this Cross-Complaint may ascertain its rights and duties with respect to
4 the claims asserted in the Second Amended Complaint. Furthermore, the Second
5 Amended Complaint and this Cross-Complaint arise out of the same occurrence, and the
6 determination of both in one proceeding is necessary and appropriate in order to avoid the
7 circuitry and multiplicity of actions that would result if Cross-complainant was required
8 to defend against the claims asserted in the Second Amended Complaint and then bring a
9 separate action against cross-defendants, and each of them, for indemnification.

10 30. Cross-complainant seeks a declaration by the Court as to their rights and
11 cross-defendants' duties and obligations as to the liability and responsibility of the cross-
12 defendants, and each of them, in connection with the matters herein alleged, and a
13 judgment in favor of Cross-complainant as to any obligations by said cross-defendants,
14 and each of them, to Cross-complainant.

15 **PRAYER**

16 **WHEREFORE**, Cross-complainant prays for judgment herein, against cross-
17 defendants as follows:

18 **First Cause of Action for Equitable Indemnity**

19 1. If it be found that cross-defendants are liable to Plaintiff, then judgment in
20 the same amount be rendered in favor of Cross-complainant and against cross-defendants,
21 and each of them;

22 **Second and Third Causes of Action for Comparative Indemnity and Contribution**

23 2. If it be found that cross-defendants are liable to Plaintiff, then judgment be
24 rendered against cross-defendants, and each of them, apportioning the respective liability
25 of cross-defendants, and each of them;

26 **Fourth Cause of Action for Declaratory Relief**

27 3. For a declaration, order and judgment thereon that Cross-complainant is
28 entitled to equitable indemnity and contribution from cross-defendants;

1 **All Causes of Action**

- 2 4. For costs of suit incurred herein, including but not limited to attorneys' fees;
3 and
4 5. For such other and further relief as this court deem just and proper.
5

6 Dated: March 30, 2012

FOLEY & MANSFIELD, PLLP

7
8 By: /s/ Victoria J. Tsoong

9 Stephen C. Chuck

10 Tiffany M. Birkett

11 Victoria J. Tsoong

12 Attorneys for Defendant/Cross-Complainant **ETS**
13 **SERVICES, LLC**
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PROOF OF SERVICE

[CCP, 1013A(3) CRC Rule 2006(d) - Revised 3/1/92]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 S. Grand Ave., Suite 2800, Los Angeles, CA 90071.

On **March 30 2012**, I served the foregoing document described as: **CROSS-COMPLAINT OF ETS SERVICES, LLC (RE: PLAINTIFF'S SECOND AMENDED COMPLAINT) FOR: 1. Equitable Indemnity; 2. Comparative Indemnity; 3. Comparative Contribution; 4. Declaratory Relief** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Roger A.S. Manlin, Esq.
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☐ **(BY MAIL)** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business.

☒ **(BY COURT'S CM/ECF SYSTEM)** Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF systems, which sent notification of that filing to the persona listed above.

Executed on **March 30, 2012**, Los Angeles, California.

☒ **[FEDERAL]** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ Leo Valente

Leo Valente